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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Implementation of Section 255 of the Telecommunications Act of 1966	)	
	)	WT Docket No. 96-198
Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities	)	

To: The Commission

REPLY COMMENTS OF SELF HELP FOR HARD OF HEARING PEOPLE, INC. (SHHH) AND GENE A. BECHTEL

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August 14, 1998

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In the Matter of Implementation of Section 255 of the Telecommunications Act of 1966 Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities	WT Docket No. 96-198

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REPLY COMMENTS OF
SELF HELP FOR HARD OF HEARING PEOPLE, INC. (SHHH)
AND GENE A. BECHTEL

I.
Summary

1. Self Help for Hard of Hearing People, Inc. (SHHH) and Gene A. Bechtel have filed opening comments in this proceeding in which this national organization for hard of hearing people and an active member who is a hard of hearing communications practitioner have been more fully identified. In this document, SHHH and Mr. Bechtel respond to various comments filed by industry parties and analyze issues under the Supreme Court's landmark Chevron decision regarding the role of administrative agencies in interpreting and applying laws enacted by Congress.

II.
Definition of "Accessible"

2. The Telecommunications Industry Association ("TIA") does not accept the Access Board's definition of "accessible." They claim it is impossible to design a product that is "accessible" under the proposed definition and that therefore manufacturers

will be reluctant to provide accessibility information about their product. If it is impossible to design an accessible product, according to the proposed definition of accessible, then the readily achievable determination kicks in. SHHH does not support changing the definition of accessible. However, we do agree that manufacturers should be allowed to label products with a listing of specific features. We agree with TIA that a statement that a product is accessible, to the extent readily achievable, provides no useful information to a person with a disability.

3. Nonetheless, we do not think the existing definition of accessible and listing specific features on a product box are mutually exclusive. The existing definition of readily achievable does not preclude a manufacturer from saying how many decibels of audio gain a product can produce, the font size and typeface used on a display, the size of buttons on a keypad, or whether the product has a voice chip or vibrating feature. TIA at page 36. We also agree that this is the kind of information that is useful to a consumer when making a product selection and SHHH encourages manufacturers to label their products in this way. It would not be necessary to state on the product that it was not readily achievable to make the product accessible according to Section 255. Only in the event of an inquiry or complaint would that defense need to be stated.

III.
Fundamental Alteration

4. Some industry commenters, TIA at pages 47-48 and

Motorola, Inc. at pages 37-40, request that fundamental alteration be added to the factors for determining what is readily achievable. They draw on the ADA precedent and urge that the FCC expressly recognize this factor. SHHH supports this concept. We should not expect a manufacturer to end up with a totally different product than what was envisioned in the early design stage because access features fundamentally alter the characteristic of the product. The Access Board guidelines include fundamental alteration as a readily achievable factor and acknowledge that fundamental alteration of products to provide access is not required. They give the example of a large visual display fundamentally altering a small pager designed to fit in a pocket. This is reasonable. However, we agree with TDI, another consumer group, that we can only support the concept of fundamental alteration if it applies to the characteristics of the product and not the characteristics of a narrow targeted market that discriminates against a broad range of users. TIA's example of the zoom capabilities in the small pager would not necessarily fundamentally alter that small pager's size characteristic as the zoom feature could be muted for those who don't want or need it. We can support this concept as long as the FCC clearly spells out how to apply it.

IV.
Volume Control Requirement

5. In their comments TIA and Siemens Business Communication System, Inc. question the discrepancy between the FCC technical specification for volume control, Section 68.317 and Section

1193.43, (e) of the Access Board's guidelines. They are opposed to a requirement that would increase the volume control maximum to 20dB. They maintain that phones meeting the 20dB requirement did not meet other performance standards that apparently they think are important and they request that the FCC retain Section 68.317 as the sole interpretation for volume control requirements. Specifically, Siemens states that at a 20dB boost, feedback could occur and that some phones require ac supplies. They conclude that the telephones may be useful to people with hearing loss but should not be the standard for general use telephones.

6. SHHH is a consumer organization and we do not have the expertise or financial resources to evaluate the industry's technical arguments within the time frame allowed here. We can say unequivocally that our constituency, the 26 million hard of hearing people in America, has repeatedly indicated that the current levels of volume control on wireline and wireless phones are not sufficient to meet their needs. These are people with all levels of hearing loss. They are part of mainstream society, many of them working, who need phones they can use comfortably and effectively - just like everyone else. At present, many of this group are precluded from using many telephones effectively. Section 255 of the Telecommunications Act was intended to address the needs of this large and growing disability group.

7. The loudness level of wired telephones has been set at 84dB at least since 1946, over 50 years ago - a time when our

world was quieter and technology was less sophisticated than it is today. It is time that we improved upon the standard. The need for greater volume in telephones has already been recognized to some degree by the wireless industry, which utilizes a standard that, at 95dB, is already higher than the wireline standard. Service providers have noted that a significant number of wireless customers use their phones with the volume full up, and have explored increasing the system-wide volume to provide greater flexibility to those who want more boost. SHHH is not in the position of providing a technological solution to this problem. Nonetheless, it would seem that the industry could explore more options available for addressing this critical issue before concluding, as Siemens has done, that a 20dB level is not feasible, so therefore the FCC should have no requirement for increasing the volume control in equipment.

8. Siemens states that because the additional 20dB proposed by the Access Board will be difficult to achieve, that the FCC should not require any additional gain at all. Yet we know from the comments that have been made to SHHH as well as consumer input provided to the Access Board on its NPRM for Section 255 that there is a pressing need to increase the minimum standard for volume control.

9. During the Negotiated Rulemaking process in 1995 that culminated in FCC NPRM Docket No. 87-124, there was solid testimony that additional volume control was needed to benefit people with hearing loss. This resulted in the FCC order

requiring, as of January 1, 2000, all newly manufactured wireline phones, including cordless phones, to include volume control.

10. We would like to comment on the current FCC Part 68.317 standard of 12-18dB of gain. The Access Board, in its Section 255 guidelines, noted that the provision for volume control is frequently incorrectly applied so that the gain only falls somewhere within the required range but does not reach the 18dB level. SHHH concurs with this observation. If in fact this is true, then what may be needed is a clarification and enforcement of the existing standard, rather than an increase in the range beyond 18dB.

11. SHHH is willing to work with the FCC and industry to develop a level for volume control under Section 255 that satisfies the needs of its constituency and that is also readily achievable for manufacturers of telecommunications equipment. Therefore, we are not taking a position on required volume levels in these reply comments except to say that we also see merit in harmonizing ADA, Section 255 and the ANSI standard. The Access Board is currently reviewing the ADA Accessibility Guidelines with the intent of harmonizing its rules with those of other standard-setting institutions. Recently, the ANSI A117.1 Committee released its 1997 "Accessible and Usable Buildings and Facilities" standard requiring that pay phones provide 12dB of gain minimum up to 20dB maximum with intermediate steps and an automatic reset.

12. One past concern of industry was the possibility of

distortion with higher levels of volume control. Testing results conducted by two independent laboratories cited in SHHH comments to the Access Board, on pages **10-12**, indicated that at 20dB of boost, telephones did not experience distortion. Industry has not disputed this finding in their comments.

V.
Agency's role in interpreting
and applying Section 255 of the Act

13. To deal with the comments of certain industry parties concerning the interpretation and application of Section 255, it is appropriate to examine the Chevron test cited by The Cellular Telecommunications Industry Association ("Cellular TIA) at page **15.** In enunciating that test, the Supreme Court stated:

> When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question of whether Consress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction of the statute, as would be necessary in the absence of an administrative determination. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

Chevron U.S.A. v. Natural Res. Def. Council, 467 U.S. 837, 842-43 (1984) [emphasis supplied]. In one of the footnotes to the foregoing passage, the Supreme Court stated:

> If a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question in issue, that intention is the law and must be given effect.

Id. I note 9 [emphasis supplied].

14. A recognized principle of statutory construction is to interpret Congressional language in light of the entire statutory scheme. E.g., Philbrook v. Glodsett, 421 U.S. 707 (1975), stating:

> "In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy" quoting from United States v. Heirs of Boisdore, 8 How. 113, 122 (1849).

421 U.S. at 713. See, also, United States v. Public Utilities Comm'n., 345 U.S. 295, 315 (1953); T.W.A. v. Civil Aeronautics Board, 336 U.S. 601, 605 (1949); United States v. Menasche, 348 U.S. 528, 535 (1955); Clark v. Uebersee Finanz-Korp., 332 U.S. 480, 488 (1947).

VI.
Monetary damages relative to common carriers

15. One party, a common carrier, Ameritech, makes an argument that monetary damages under Section 207 of the Act may not be assessed against common carriers for violations of Section 255. As we understand the prolix presentation of that argument, at pages 10-19 of the comments, the premise is that Section 255's reference to excluding private actions not only ruled out the ability to bring suit for damages in federal district courts, as provided in Section 207, but also precluded even the filing of a complaint for damages with the FCC, as provided in Section 207. Such a position, which has not been advanced by any other common carrier, cannot be regarded either (a) as the intention of Congress "directly addressed to this precise question" or (b) as an acceptable agency construction of Section 255.

16. Section 207 provides for concurrent jurisdiction of the federal district courts and the FCC to entertain actions for damages. See, e.g., Moretta Metals v. ITT World Communications, 28 R.R.2d 1471 (1973) ("Section 207 of the Act sets out two forums wherein a complainant can receive a hearing."). Monetary damages is the essential, if not sole, ingredient of complaints filed with the FCC under Section 207. See, e.g., Resulatorv Treatment of Mobile Services, 74 R.R.2d 835 (1994) ("These sections make carriers liable for monetary damages to any party aggrieved by a violation of the Communications Act, and guarantee the right of successful complainants to pursue the collection of damages either through the courts or the Commission...Without the possibility of obtaining redress through collection of damages, the complaint remedy is virtually meaningless."). Accordingly, to eliminate monetary damages from FCC complaints under Section 207 would render that complaint remedy "virtually meaningless."

17. The part of Section 255, on which Ameritech relies for such a cataclysmic result, reads as follows:

> (f) No Additional Private Rights Authorized.--Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section or any regulation thereunder.

If Congress, thusly, directly intended to address the precise issue of abolishing both FCC complaints and lawsuits in federal courts for damages as a means to enforce Section 255 violations, it would have added a sentence to the effect that, for example, "...the Commission shall enforce any complaint under this section by cease and desist orders, injunctive actions and monetary forfeitures payable into the public treasury."

18. Instead, Congress did two things. First, it added <u>this</u> sentence to the passage set forth above:

> The Commission shall have <u>exclusive jurisdiction</u> with respect to any complaint under this section. [emphasis supplied]

This language is squarely at odds with any notion of writing Section 207 out of the statutory scheme for implementation of Section 255. <u>Black's Law Dictionary</u>, Fourth Edition (1951), at 991, defines "jurisdiction" as embracing "every kind of judicial action"; . . . the authority by which courts and judicial officers take cognizance of and decide cases;" "It exists when court has cognizance of class of cases involved, proper parties are present, and point to be decided is within issues." This general understanding of the word "jurisdiction" is reinforced by the use of the words "exclusive jurisdiction" in the context of the otherwise concurrent jurisdiction with federal district courts in Section 207. Taking into account that venerable component of the statutory scheme, this added sentence makes clear that Congress (a) did not want various and sundry federal district courts becoming involved in Section 255 cases, and (b) intended to vest full and sole jurisdiction in the Commission to hear Section 255 cases without altering the scope of the remedies the agency could apply.

19. This seems clear from the statutory language itself. However, if there is any ambiguity on that score, allowing reference to the legislative history, the second thing which

Congress did was to nail this intent down in the Conference Report, stating without caveat, reservation or limitation: "The remedies available under the Communications Act, including the provisions of Sections 207 and 208, are available to enforce compliance with the provisions of Section 255." Conf. Rep. 104-230, 104th Cong., 2d Sess. (1996) at 135.

VII.
Monetary damages relative to manufacturers

20. Before considering the comments of certain manufacturers that monetary damages should not be applied to them, the structure and content of Section 255 should be reviewed. There are six subsections, (a) through (f):

(a) Defines two terms applicable to the entire section, including both manufacturers and common carriers, i.e., "disability" and "readily achievable."

(b) Addresses manufacturers: "A manufacturer of telecommunications equipment or customer premises equipment shall ensure that the equipment is designed, developed, and fabricated to be accessible to and usuable by individuals with disabilities, if readily achievable." Thus, Section 255 imposes obligations on manufacturers and makes provision for their enforcement (in subsection (f) which we shall discuss in a moment).

(c) Addresses common carriers: "A provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable." Thus, except for the reference to service rather than equipment, the obligations of common carriers are identical to the obligations of manufacturers and, as will be shown, there is no difference in their enforcement provisions in subsection (f) below.

(d) Factors in the "compatibility" concept of Section 255 [i.e., whenever the requirements of subsections (b), pertaining to manufacturers, and (c), pertaining to common carriers, are not readily achievable] impose the identical "compatibility" obligation on both manufacturers and common carriers.

(e) Provides for guidelines by the Architectural and Transportation Barriers Compliance Board pertaining to accessibility of equipment.

(f) Grants the Commission exclusive jurisdiction with respect to any complaint under Section 255.

21. From the language of this statute, it is clear that Congress directly spoke with precision on the issue that telecommunications manufacturers and common carriers are both industries upon whom it wished to impose the prescribed obligations to achieve accessibility to telecommunications equipment and services for people with hearing loss and other citizens with disabilities in our nation.

22. From the language of this statute, it is clear that Congress did <u>not</u> directly speak with precision on the issue of whether, in its exclusive jurisdiction to enforce Section 255, the Commission could or should impose monetary penalties on manufacturers who are not common carriers. Accordingly, resort may be had to the legislative history and here is where Congress

did address the matter in the passage quoted earlier that merits repeating here:

> The remedies available under the Communications Act, including the provisions of Sections 207 and 208, are available to enforce compliance with the provisions of Section 255.

Conf. Rep. 104-230, 104th Cong., 2d Sess. (1996) at 135.

23. Bear in mind that monetary damages <u>are</u> provided for in Section 207 and if Congress intended to eliminate that venerable enforcement means, the Conference Report would have referred only to Section 208, not to both Sections 207 and 208. Also bear in mind that the Conference Report was written in conjuction with a statute that involved manufacturers in each and every subsection and in lock step with common carriers. Had Congress wished to exclude the telecommunications manufacturing industry -- eliminating the entire corpus of one-half of the lock-step regulatees under the statute -- from one of the agency's most important enforcement mechanisms, such an aberrational aspect of the otherwise cohesive and clear intent, to jointly and severally apply and enforce Section 255 to both halves of the regulated universe, would have been stated and the reason would have been given. Application of damages remedies under Section 207, as well as other remedies under Section 208, to the manufacturing regulatees along with the common carrier regulatees, furthers the statutory scheme of Section 255; failure to do so undermines the statutory scheme of Section 255.

24. The manufacturers who oppose the remedy of monetary damages for violation of Section 255, rely on the language of

Section 207 historically and nominally addressed only to common carriers without taking into account these factors, and their comments do not detract from the foregoing analysis. See comments indentified in the paragraphs that follow, also comments of Brightpoint, Inc. at pages 6-7. Nor do their comments raise any other arguments supporting a contrary result:

25. The comments of Uniden American Corporation, at pages 8-9, make the astonishing argument that Section 207 does not even authorize the Commission to impose monetary penalties on common carriers, without citation to any of the legion of decisions during the past sixty years in which the FCC has awarded such damages. Those comments, at page 9, note 17, also cite an FCC opinion for the proposition that the Commission defers to the plain language of the statute rather than a vague provision of the Conference Report, but the passage cited relates to a different issue of statutory/legislative history language (regarding access to certain rights of way) and moreover, unless our bifocals need checking, the pages cited do not contain anything like what they are cited for.[1]

26. The comments of The Business Software Alliance, at pages 14-15, argue that the Commission cannot look to Sections 207 and 208 for enforcement of Section 255 because these sections are not mentioned in the text of Section 255; then argue that the

[1] Pages 16058-60 of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 F.C.C. Rcd 15499 (1996). We trust we may be forgiven for failing to search for the correct citation in this Report & Order which is 754 pages in length.

Commission can enforce orders by "fines or penalties" although these aren't mentioned in text of Section 255 either.

27. The comments of TIA, at page 54, argue that the access requirements of Section 255 do not apply to manufacturers at all because Section 255 is located in Title II of the Communications Act, which is captioned "Title II - Common Carriers." This argument, of course, ignores the provisions applicable to manufacturers in every single subsection of Section 255 described earlier in ¶20. With similar reasoning, TIA, at page 97, dismisses Sections 207 and 208, again coming under "Title II - Common Carriers," and dismisses the enforcement provisions of Section 312 as well, which come under "Title III - Provisions Relating to Radio." TIA's ostrich-like bottom line, it appears, is that (a) Section 255 does not apply to manufacturers and (b), even if it did, Section 255 can't be enforced against them.

28. The comments of the Consumer Electronics Manufacturers Association ("CEMA"), at page 25, note 52, purport to create the impression that the Commission has already recognized that the complaint procedures under Sections 207 and 208 are distinct from complaint procedures under Section Section 255. This, of course, is not the case. CEMA's not altogether ingenuous citation is to the notice of proposed rulemaking in this proceeding calling for comments concerning applicability of procedures under Sections 207 and 208. 12 F.C.C. Rcd at 22501 (¶3 and note 8). The Commission's notice here in many respects proposes adoption or adaptation of the Section 207 and 208 procedures and many

commenting parties support the use of those procedures. Whether and to what extent those procedures will be identical to, or distinct from, procedures to be followed under Section 255 has not yet been decided.

VIII.

Enhanced services v. adiunct-to-basic services

29. SHHH and numerous other commenting parties, knowledgable about the needs of people with hearing loss and other disabled citizens, have identified the need for access to telecommunications services which come under the category of "enhanced services," rather than the category of "adjunct-to-basic services," including commonplace features (that others take for granted) such as voice mail and voice menus in computerized telephone answering programs. The opening comments of SHHH are addressed to this subject; we wish to add a footnote here in light of the foregoing discussion of the Chevron test and interpretation and application of Section 255 under that test.

30. The categories of "enhanced services" and "adjunct-to-basic" services are not found in Section 255 or other statutory definitions and provisions cited by some commenting parties. It is crystal clear that in adopting Section 255, Congress did not directly speak to the precise question of the distinction between "enhanced services" and "adjunct-to-basic services." But we do know that the Congress intended citizens with disabilities to have reasonable access to telecommunications equipment and services if readily achievable and/or under the compatibility provisions; and we can say with full confidence that if such

commonly used, essential telephone features as voice mail or menu answering devices can be provided to hard of hearing, deaf, or other people with disabilities, within the parameters of those statutory provisions, Congress intended this to hapnen.

31. The mission of this Commission is to adopt rules and procedures that allow and foster the development and provision of reasonable access to telecommunications equipment and services -- whereever the path of effectuation of Section 255 may lead to. The manufacturing and service provider industries have enough statutory protections under the rubric of "readily achievable." It will not do for the Commission to say that its delineation of "enhanced" and "adjunct-to-basic" for other regulatory reasons must or should be applied here as well. As indicated in our opening comments, all of the distinctions which the Commission has employed regarding "enhanced" and "adjunct-to-basic" service have related to telephone industry programs and needs having nothing to do with Section 255. No commenting party has shown the contrary to be true.

32. The Commission cannot draw such a categorical line of distinction under Section 255. An "enhanced service" cannot be excluded from consideration solely by virtue of the fact that it is an "enhanced" service. "Readily achievable" and other elements of Section 255 must be applied. If this is not done, the Commission's action is an arbitrary and capricious impermissible construction of the statute, and conflicts with the second prong of the Chevron test.

IX.
Reply to certain matters resardins complaint procedures

A.
Time period to convert from informal to formal complaint

33. The six-month limit in the current rules for a party to convert an informal complaint to a formal complaint should be applied. Comments of Nextel Communications, Inc. at page 10-11 and Cellular TIA at 18.

B.
Needlessly redundant rulinss on complaints

34. The comments of Cellular TIA at page 18 state that once the Commission has held a given industry activity to be consistent with Section 255, that ruling should govern other complaints raising the same issue. We agree, and the same would apply to rulings which hold a given industry activity to be a violation of Section 255. The Commission need not make needlessly redundant rulings, an established concept of administrative law. Bechtel v. FCC, 10 F.3d 875, 878 (D.C.Cir. 1993); McLouth Steel Products Corp. v. Thomas, 838 F.2d 1317, 1321 (D.C.Cir. 1988); see, also, FCC v. WNCN Listeners Guild, 450 U.S. 582, 603 (1981).

C.
Confidentiality of information relevant to an issue of compliance with Section 255

35. CEMA quotes an article underscoring the utility of disclosure of information by regulated parties:

> [Professor Sustein] reasons that a system which requires companies to disclose information, in this case information concerning their accessible products and services, could spur voluntary action on the part of carriers and manufacturers to satisfy public demand

Comments of CEMA at page 4, note 9, citing Congress, Constitutional Moments, and the Cost Benefit State, Stan. L. Rev. 247, 261, 301 (1996). We agree.

36. We also agree with the premise that provision should be made for protecting the confidentiality of proprietary information while at the same time securing material and relevant information necessary to determine compliance with Section 255. Comments of Motorola, Inc. at pages 53-55, Cellular TIA at page 25, CEMA at pages 23-24, TIA at pages 88-91, Lucent Technologies at pages 12-13, Northern Telecom, Inc. at page 7, Philips Consumer Communications LP at pages 14-15, the United States Telephone Association at pages 17-18, GTE at pages 14-15, and, the Information Technology Industry Council at pages 39-41.

37. The Commission has just concluded a rulemaking proceeding on the subject and, based on its experience and comments by interested parties, has concluded that the "confidentiality" provisions of 47 C.F.R. §1.731 have been and are an effective mechanism to obtain information needed for agency decisions while protecting proprietary interests of the parties. Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, slip opinion FCC 98-184, released August 4, 1998, at ¶¶49-51. The Commission's rules, as updated and fine-tuned in this Report and Order, should serve the Commission and the parties well in the administration of Section 255.

D.
Retain reasonable discovery rishts and procedures

38. One commenting party asks the Commission to delete any provisions for discovery in dealing with Section 255 compliance issues. TIA at page 93. The Commission has recently concluded an overhaul of its complaint procedures, based on its experience and the comments of interested parties many of whom are also commenters in this instant rulemaking proceeding, in which the subject of discovery was addressed at length. Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers, 12 F.C.C. Rcd 22497 (¶¶101-125) (1997). The Commission considered comments on various aspects of the nature of discovery in formal complaint proceedings and made a number of adjustments to arrive at a more effective, but limited, discovery mechanism essential to its decisionmaking process. TIA's single, unanalytical sentence, referring to discovery only as "burdensome," provides no basis to overturn the agency's comprehensive, contemporaneous analysis of the subject.

E.
Time limit on filing complaints

39. In its opening comments, SHHH supports the Commission's position that no time limit should be placed on the filing of complaints. However, should the Commission be disposed to change its mind, the time period should be at least two years from the time the aggrieved party purchases the equipment or subscribes to the service in question. Comments of the Personal Communications Industry Association at page 16. To start the period of

limitation when the product or service is first made available to the general public, comments of CEMA at page 20, or to specify a period of limitation of only six or 12 months, comments of TIA at pages 86-87 and comments of The Business Software Alliance at page 12, are unfair proposals designed to squeeze the users, already handicapped by an economic and strategic playing field tilted in favor of the manufacturers and service providers, rather than to set any valid "statute of limitations" time frame to guard against the litigation of stale claims.

Respectfully submitted,

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August 14, 1998

Courtesy copies are being mailed to counsel for commenting parties referred to in the text.